

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

ELRAMAHI, Bashar Mohammad
A71 924 364

Plaintiff,

V.

MICHAEL CHERTOFF, Secretary of the U.S. Department of Homeland Security; MICHAEL MUKASEY, U.S. Attorney General; EMILIO T. GONZALEZ, Director, U.S. Citizenship & Immigration Services; RUTH A. DOROCHOFF, District Director, U.S. Citizenship & Immigration Services, Chicago Field Office; F. GERARD HEINAUER, Director, Nebraska Service Center; and ROBERT S. MUELLER, III, Director of the Federal Bureau of Investigation,

Defendants.

FILED: AUGUST 18, 2008

NO. 08CV4695

JUDGE GRADY

MAGISTRATE JUDGE BROWN

RCC

PETITION FOR A WRIT OF MANDAMUS ON NATURALIZATION APPLICATION

NOW COMES the Plaintiff, Bashar Mohammad Elramah, by and through his attorney, Stanley J. Horn of Horn, Khalaf, Abuzir, Mitchell & Schmidt, and Petitions this Honorable Court pursuant to Immigration & Nationality Act (“INA”) § 336(b) and 8 U.S.C. § 1447(b), to issue a Writ of Mandamus compelling the Defendants to complete the processing of this Naturalization Application, and in support thereof, states as follows:

STATEMENT OF ACTION

1. This petition is brought to compel action on an Application for Naturalization (“N-400”) under Section 334 of the Immigration and Nationality Act properly filed with the United States Citizenship and Immigration Services (“USCIS”) by the Plaintiff. To the Plaintiff’s detriment, Defendants have failed to adjudicate the application.

JURISDICTION AND VENUE

2. This court has original jurisdiction to hear both civil actions arising under the laws of the United States and actions to compel an officer or employee of the United States or any agency thereof to perform a duty. 28 U.S.C. § 1331; 28 U.S.C. § 1361. This Court also has jurisdiction to grant declaratory relief pursuant to 28 U.S.C. §§ 2201-2202.

3. This action is brought to compel the Defendants, officers and an agency of the United States, to perform the duties arising under the laws of the United States. This Court has jurisdiction to hear actions arising from claims that an agency or officer or employee of a government agency failed to act in its or his or her official capacity and the person to whom the duty was owed suffered a legal wrong. 5 U.S.C. § 702.

4. This action invokes the Plaintiff's right of due process under the Fifth Amendment of the United States Constitution, over which this Court retains jurisdiction. This action is also brought due to the failure of the Defendants to perform their duty to adjudicate the Plaintiff's N-400 Application for Naturalization under Section 334 of the INA within 120 days after the examination on the Application is considered. Failure to adjudicate said Application has resulted in harm to the Plaintiff.

5. Venue is proper in the Northern District of Illinois because Plaintiff resides in the Northern District of Illinois and a substantial part of the activities complained of occurred in the Northern District of Illinois. See 8 U.S.C. § 1391(e).

PARTIES

6. Plaintiff, Bashar Mohammad Elramah, is a native and citizen of Jordan, who has been a Lawful Permanent Resident for more than five (5) years. He has continuously resided in the United States and has satisfied the residency requirements for Naturalization, has been a person

of good moral character and has demonstrated knowledge of the English language, U.S. government and history as required by INA § 316, 8 U.S.C. § 1427 (see Exhibit 1).

7. Defendant Michael Chertoff ("Chertoff"), the Secretary for the Department of Homeland Security ("DHS"), is being sued in his official capacity only. Pursuant to the Homeland Security Act of 2002, Pub. L. 107-296, Defendant Chertoff, through his delegates has authority to adjudicate Naturalization Applications filed with the United States Citizenship and Immigration Services (USCIS) to accord applicants citizenship under the provisions of Section 335 of the INA, 8 U.S.C. § 1446.

8. Defendant Michael Mukasey ("Mukasey"), the Attorney General of the United States, is being sued in his official capacity only. Mukasey is authorized to promulgate regulations governing the implementation and administration of the Immigration and Nationality Act pertaining to the naturalization of legal resident aliens and other qualified aliens.

9. Defendant Emilio T. Gonzalez, the Director of the United States Citizenship and Immigration Services, is being sued in his official capacity only. His Under Secretary position within the Department of Homeland Security charges him with supervisory authority over federal and contract employees who are responsible for the processing of immigration benefits.

10. Defendant Ruth Dorchoff ("Dorchoff"), the Officer-in-Charge of the USCIS Chicago Field Office, is being sued in her official capacity only. Dorchoff is in charge with supervisory authority over all of Chicago USCIS operations and USCIS agents and officers acting in their official capacity.

11. Defendant F. Gerard Heinauer ("Heinauer"), the Director of the USCIS Nebraska Service Center, is being sued in his official capacity only. Heinauer is charged with supervisory

authority over all of the Nebraska USCIS operations where Plaintiff's application is currently pending.

12. Defendant Robert S. Mueller III ("Mueller"), Director of the Federal Bureau of Investigation ("FBI"), is being sued in his official capacity only. Mueller has authority over the FBI's actions and the actions of its agents and officers. The FBI is statutorily obligated to conduct security checks on all Applications for Naturalization.

CAUSE OF ACTION

13. Plaintiff filed Form N-400, Application for Naturalization on January 3, 2005 with the USCIS pursuant to Section 334 of the Immigration Act of 1990, Pub. L. No. 101-649, 104 Stat. 4978, 8 U.S.C. § 1445 (see Exhibit 2).

14. Plaintiff followed the appropriate procedures for the Naturalization process, including having fingerprints taken in accordance with the procedures set up by the Defendants.

15. On April 13, 2005, Plaintiff appeared for a Naturalization Interview conducted by a USCIS Officer.

16. On the aforesaid date, an examination was conducted. Plaintiff passed the test of English and U.S. history and government (see Exhibit 1).

17. That there has not yet been a decision on Petitioner's N-400 Application, despite the fact that it has been pending since April 13, 2005 and despite numerous inquiries with USCIS.

18. That the Defendants' failure to adjudicate the Plaintiff's application for naturalization has no basis for the unconscionable delay.

PRAYER

WHEREFORE, Plaintiff prays that this Court grant him the following relief:

A. Assume jurisdiction over the case and naturalize him;

- B. Grant him citizenship pursuant to him application for naturalization, or, alternatively, order Defendants to adjudicate her application within 60 days;
- C. Award Plaintiff reasonable attorney's fees pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412, for failure of the Defendants to perform their duties within the statutory time period; and
- D. Such other relief at law and in equity as justice may so require.

Respectfully submitted,
BASHAR MOHAMMAD ELRAMAHI

BY: s/Stanley J. Horn
STANLEY J. HORN
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Department of Homeland Security
U.S. Citizenship and Immigration Services

N-652, Naturalization Interview ResultsA#: 71924364On 4-13-05, you were interviewed by USCIS officer Lee

- ☒ You passed the tests of English and U.S. history and government.
- ☐ You passed the tests of U.S. history and government and the English language requirement was waived.
- ☐ USCIS has accepted your request for a Disability Exception. You are exempted from the requirement to demonstrate English language ability and/or a knowledge of U.S. history and government.
- ☐ You will be given another opportunity to be tested on your ability to _____ speak/_____ read/_____ write _____ English.
- ☐ You will be given another opportunity to be tested on your knowledge of U.S. history and government.
- ☐ Please follow the instructions on Form N-14.
- ☒ USCIS will send you a written decision about your application.
- ☐ You did not pass the second and final test of your _____ English ability/ _____ knowledge of U.S. history and government. You will not be rescheduled for another interview for this Form N-400. USCIS will send you a written decision about your application.

A) _____ Congratulations! Your application has been recommended for approval. At this time it appears that you have established your eligibility for naturalization. If final approval is granted, you will be notified when and where to report for the Oath Ceremony.

B) _____ A decision cannot yet be made about your application.

It is very important that you:

- ☒ Notify USCIS if you change your address
- ☒ Come to any scheduled interview.
- ☒ Submit all requested documents.
- ☒ Send any questions about this application in writing to the officer named above. Include your full name, Alien Registration Number (A#), and a copy of this paper.
- ☒ Go to any Oath Ceremony that you are scheduled to attend.
- ☒ Notify USCIS as soon as possible in writing if you cannot come to any scheduled interview or Oath Ceremony. Include a copy of this paper and a copy of the scheduling notice.

NOTE: Please be advised that under section 336 of the Immigration and Nationality Act, you have the right to request a hearing before an immigration officer if your application is denied, or before the U.S. district court if USCIS had not made a determination on your application within 120 days of the date of your examination.

EXHIBIT

1.

UNITED STATES OF AMERICA

Receipt with Exception			NOTICE DATE January 12, 2005
CASE TYPE N400 Application For Naturalization			INS A# A-071 924 364
APPLICATION NUMBER LEN*000735429	RECEIVED DATE January 03, 2005	PRIORITY DATE January 03, 2005	PAGE 1 of 1
APPLICANT NAME AND MAILING ADDRESS BASHAR MOHAMMAD ELRAMAHI c/o IRA B KAHN IRA B KAHN 53 W JACKSON SUITE 725 CHICAGO IL 60604		PAYMENT INFORMATION Single Application Fee: \$390.00 Total Amount Received: \$390.00 Total Balance Due: \$0.00	
<p>The above application has been received by our office and is in process, but has been noted with one or more of the following exception(s):</p> <p>Missing Evidence(s) - your application was missing evidence(s) that you will need to provide at the time of your naturalization interview. You will be notified under separate notice of the necessary evidence(s) that you will be required to bring to your interview. Do not submit any evidence(s) by mail.</p> <p>08CV4695 JUDGE GRADY MAGISTRATE JUDGE BROWN RCC</p> <p>Our records indicate your personal information is as follows: Date of Birth: August 10, 1971 Address Where You Live: 7707 S MELVINA BURBANK IL 60459</p> <p>Please verify your personal information listed above and immediately notify our office at the address or phone number listed below if there are any changes.</p> <p>You will be notified of the date and place of your interview when you have been scheduled by the local INS office. You should expect to be notified within 540 days of this notice.</p> <p>IMPORTANT NOTICE: All naturalization applicants who were between the ages of 14-75 at the time of filing must have their fingerprints taken at an INS Application Support Center (ASC) so they can be submitted to the Federal Bureau of Investigation for a criminal history check. If we received your application without a fingerprint card (FD-258), or your fingerprint card was received on or after December 3, 1997, you will need to go to an ASC to be fingerprinted. Do not have your fingerprints taken anywhere else. You will receive a notice that will provide you with information about when and where to go to have your fingerprints taken, and what you will need to bring with you. Please inform the office listed below immediately of any address changes.</p> <p>If you have any questions or comments regarding this notice or the status of your case, please contact our office at the below address or customer service number. You will be notified separately about any other cases you may have filed.</p> <p>If you have other questions about possible immigration benefits and services, filing information, or INS forms, please call the INS National Customer Service Center (NCSC) at 1-800-375-5283. If you are hearing impaired, please call the NCSC TDD at 1-800-767-1833.</p> <p>If you have access to the Internet, you can also visit INS at www.ins.usdoj.gov. Here you can find valuable information about forms and filing instructions, and about general immigration services and benefits. At present, this site does not provide case status information.</p> <p>INS Office Address: US IMMIGRATION AND NATURALIZATION SERVICE PO BOX 87400 LINCOLN NE 68501-</p> <p>INS Customer Service Number: (800) 375-5283</p> <p>REPRESENTATIVE COPY</p> <p>tabbies</p> <p>EXHIBIT</p> <p>2.</p> <p>LIN\$000688533</p>			